

ASSEMBLY BILL

No. 442

Introduced by Assembly Member Nazarian

February 19, 2013

An act to amend Sections 1194.2 and 1197.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 442, as introduced, Nazarian. Employees: wages.

Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages. Existing law authorizes the Labor Commissioner to recover liquidated damages for an employee who brings a complaint alleging payment of less than the minimum wage fixed by an order of the commission or by statute.

Existing law subjects any employer, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission or by statute, to a citation that includes a civil penalty and the payment of restitution of wages to the employee.

This bill would expand that penalty and restitution provision for a citation to also subject the employer to payment of liquidated damages to the employee.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1194.2 of the Labor Code is amended to read:

1194.2. (a) In any action under Section 98, 1193.6, ~~or~~ 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation.

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(c) This section applies only to civil actions commenced on or after January 1, 1992.

SEC. 2. Section 1197.1 of the Labor Code is amended to read:

1197.1. (a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty ~~and~~, restitution of wages, *and liquidated damages* payable to the employee, as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages *and liquidated damages pursuant to Section 1194.2*.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This

1 amount shall be in addition to an amount sufficient to recover
2 underpaid wages *and liquidated damages pursuant to Section*
3 *1194.2*.

4 (3) Wages *and liquidated damages* recovered pursuant to this
5 section shall be paid to the affected employee.

6 (b) If, upon inspection or investigation, the Labor Commissioner
7 determines that a person has paid or caused to be paid a wage less
8 than the minimum, the Labor Commissioner may issue a citation
9 to the person in violation. The citation may be served personally
10 or by registered mail in accordance with subdivision (c) of Section
11 11505 of the Government Code. Each citation shall be in writing
12 and shall describe the nature of the violation, including reference
13 to the statutory provision alleged to have been violated. The Labor
14 Commissioner promptly shall take all appropriate action, in
15 accordance with this section, to enforce the citation and to recover
16 the civil penalty assessed ~~and~~, wages, *and liquidated damages* in
17 connection with the citation.

18 (c) (1) If a person desires to contest a citation or the proposed
19 assessment of a civil penalty ~~and~~, wages, *and liquidated damages*
20 therefor, the person shall, within 15 business days after service of
21 the citation, notify the office of the Labor Commissioner that
22 appears on the citation of his or her request for an informal hearing.
23 The Labor Commissioner or his or her deputy or agent shall, within
24 30 days, hold a hearing at the conclusion of which the citation or
25 proposed assessment of a civil penalty ~~and~~, wages, *and liquidated*
26 *damages* shall be affirmed, modified, or dismissed.

27 ~~The~~

28 (2) *The* decision of the Labor Commissioner shall consist of a
29 notice of findings, findings, and an order, all of which shall be
30 served on all parties to the hearing within 15 days after the hearing
31 by regular first-class mail at the last known address of the party
32 on file with the Labor Commissioner. Service shall be completed
33 pursuant to Section 1013 of the Code of Civil Procedure. Any
34 amount found due by the Labor Commissioner as a result of a
35 hearing shall become due and payable 45 days after notice of the
36 findings and written findings and order have been mailed to the
37 party assessed. A writ of mandate may be taken from this finding
38 to the appropriate superior court. The party shall pay any judgment
39 and costs ultimately rendered by the court against the party for the

1 assessment. The writ shall be taken within 45 days of service of
2 the notice of findings, findings, and order thereon.

3 (d) A person to whom a citation has been issued shall, in lieu
4 of contesting a citation pursuant to this section, transmit to the
5 office of the Labor Commissioner designated on the citation the
6 amount specified for the violation within 15 business days after
7 issuance of the citation.

8 (e) When no petition objecting to a citation or the proposed
9 assessment of a civil penalty ~~and~~, wages, *and liquidated damages*
10 is filed, a certified copy of the citation or proposed civil penalty
11 ~~and~~, wages, *and liquidated damages* may be filed by the Labor
12 Commissioner in the office of the clerk of the superior court in
13 any county in which the person assessed has or had a place of
14 business. The clerk, immediately upon the filing, shall enter
15 judgment for the state against the person assessed in the amount
16 shown on the citation or proposed assessment of a civil penalty
17 ~~and~~, wages, *and liquidated damages*.

18 (f) When findings and the order thereon are made affirming or
19 modifying a citation or proposed assessment of a civil penalty ~~and~~,
20 wages, *and liquidated damages* after hearing, a certified copy of
21 these findings and the order entered thereon may be entered by
22 the Labor Commissioner in the office of the clerk of the superior
23 court in any county in which the person assessed has property or
24 in which the person assessed has or had a place of business. The
25 clerk, immediately upon the filing, shall enter judgment for the
26 state against the person assessed in the amount shown on the
27 certified order.

28 (g) A judgment entered pursuant to this section shall bear the
29 same rate of interest and shall have the same effect as other
30 judgments and be given the same preference allowed by the law
31 on other judgments rendered for claims for taxes. The clerk shall
32 make no charge for the service provided by this section to be
33 performed by him or her.

34 (h) The civil penalties provided for in this section are in addition
35 to any other penalty provided by law.

36 (i) This section shall not apply to any order of the commission
37 relating to household occupations.

O